SUBMISSION OF SYNOPSIS FOR PhD

TOPIC: A study of the concept of Sustainable Development and it's implications on Corporate Social Responsibility: With special Reference to Constitutional mandate and safeguarding of existing environmental resources.

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Thesis Plan

Topic- A study of the concept of Sustainable Development and it's implications on Corporate Social Responsibility: With special Reference to Constitutional mandate and safeguarding of existing environmental resources.

This academic research aims to develop a relation between Corporate Social Responsibility (CSR) and Sustainable Development (SD) in India. This work also argues for a broader role for companies in discharging social responsibilities in India, a role which would be compatible with actual and prospective developments in India. Without judicial intervention, the mandate of corporate social responsibilities may never be realized. A new legal regime is required in this area. This paper will also highlight the intricate relation between corporations and the environment which is of paramount importance. The corporations are utilizing the natural resources to make the end products but in turn giving back the environment the waste and emissions. Use of these products also leads to environmental degradation. This ecological imbalance should be taken care of by each and every corporation as one of their good business practice and at the same time to give a healthy environment to our society.

Research Background

The case of Bhopal Gas Leak which occurred on 3rd Dec, 1984 is no doubt a worst example of negligence in industrial sector. It is a fact that the Government of India is highly responsible for this disaster but the liability of the US based MNC in this above mentioned case cannot be overlooked. The liability of this parent company and the Indian Government were questioned in terms of their legality and morality. The ethical questions were also raised against them for running such dangerous and hazardous industries without safeguarding the interest of the citizens.[1]

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1. SHYAM DIVAN& ARMIN ROSENCRANZ, ENVIRONMENTAL LAW & POLICY IN INDIA 549 (2001)

Many years after the Bhopal gas leak, the worst industrial catastrophe in history, it remains unclear who must bear legal responsibilities. [2]

When oleum gas leaked from one of the units of Shriram Foods and Fertilizers Industry in Delhi in December 1985, The Supreme Court formulated the following two principles of :

- Absolute liability (where act of God and sabotage constitute the only exceptions) and
- Enterprise liability where the amount of compensation would depend upon the capacity of the industry.[3]

Right to life implies the right to live in pollution free and ecologically balanced environment. Whether the environment can really be protected these days when almost all the countries in South-East Asia are still developing? It is quite obvious that the development is achieved through industrialization, but at the same time we should not forget that the industrialisation is the main cause of environmental degradation. To resolve this issue, the experts worldwide have come up with a doctrine called 'Sustainable Development', i.e. there must be balance between development and ecology.[4]

The concept of 'Sustainable Development' can be traced back as early as in 1972 in the Stockholm Conference. So it is not a new concept though it was given a definite shape in a report by World Commission on Environment and Development (WCED), which was known as ' our common future'. The commission, which was chaired by the then Norway Prime Minister, Ms. G.H. Brundtland defined "Sustainable Development" as:

" Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".[5]

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2. SHYAM DIVAN& ARMIN ROSENCRANZ, ENVIRONMENTAL LAW & POLICY IN INDIA 550 (2001)

3. Dr.UshaRamanathan, *Liability and Environmental Damage, The Indian Experience,* available at http://ielrc.org/activities conference_0402/assets/kl/040226_UshaRamanathan.pdf. (Last visited on November 12, 2011).

4*Sustainble Development in Indian Constitution,* available at *http*://www.legalserviceindia.com/articles/jud.html (Last visited on March 20, 2011).

5. *Brundtland Report* available at http://www.sustainablecities.dk /en/actions/a-paradigm-in-progress/brundtland-report-our-common –future (Last visited on November 22, 2011)

The abovementioned report is also popularly known as 'Brundtland report'. The concept was further discussed under Agenda 21 of UN conference on environment and development held in June 1992 at Rio de Janeiro, Brazil.

Constitution of India is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the environment. Articles: 21, 24, 39(a), 39(b), 48,51A of the Indian Constitution are worth mentioning.

Since 1972, India has been taking some concrete steps towards protection of environment as result of which, a mass of environmental legislations have evolved. Some important legislations which can be mentioned here are as follows: The Environment (Protection) Act 1986 ("**EPA**"); Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Wildlife (Protection) Act; 1972, Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008 ("Hazardous Waste Rules"); The Public Liability Insurance Act, 1991; The Forest (Conservation) Act, 1927; National Green Tribunal Act 2010.

Chief Justice Bhagwati in *M.C.Mehta v.Union of India* [6] declared in unambiguous terms that "we have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. We no longer need the crutches of a foreign legal order".
Some such principles and doctrines propounded by the Indian Judiciary are [7]

- Principle of Absolute Liability
- Polluter Pays Principle
- Precautionary Principle
- Public Trust Doctrine
- Concept of Sustainable Development
- Inter-generational Equity.

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6. *M.C.Mehta v.Union of India* AIR 1987 SC 1086 at p1089
7. INTRODUCTION TO ENVIRONMENTAL LAW, S.SANTHAKUMAR 101(2005).

Thus it is essential that the natural\environmental resource base be used wisely and sustainably. In *Vellore Citizen's Welfare Forum v.Union of India and Others*[8] it was held that "the Precautionary Principle" and "the Polluter's Pays Principle are essential features of "Sustainable Development". "Polluter Pays Principle" as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Nowadays a good number of companies have started promoting their CSR strategies as the investors, customers and the public are demanding them to be more responsible and sustainable. It is evident that in some cases CSR is the outcome of various social, economic and environmental pressures. CSR should also take into account the climate change, sustainable management of natural resources and consumer protection along with the compliance of human rights standards, labour and social security arrangements. The concept of **Climate Justice** should also be taken into account by Corporations while formulating their policies on CSR.

Research Objectives:

The objective of this paper is to look at the inter-relations between corporate law and environmental law within the framework of constitutionalism. My primary goal will be looking at corporate social responsibility which defines these inter-relations. It will attempt to find out the socio-environmental effects of a company's economic actions to society at large and thereby giving the common man an understanding of the various initiatives undertaken by corporate and the role that is played by the Government in the field. So the main objective of this research paper would be to prevent the future environmental degradation, which will be caused by various corporations.

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(8) *Vellore Citizen's Welfare Forum v.Union of India and Others* 1996, 5SCC 647-648.

Research Question:

Is the Corporate Social Responsibility, accountable under the Constitutional Mandate to observe the principle of Sustainable development, at the time of discharging its functions?

Outline of Thesis:

Based on this research question outline of this Thesis are as follows:

Chapter 1 – Introduction

Chapter 2 – Recognition of International environmental law obligation under Indian Constitution

Article 21

Article 48A

Article 51 A (g)

Article 253

Stockholm, Brundtland, Rio, Johannesburg, etc

Chapter 3 –Constitutional safeguard on Corporation and Sustainable Development.

Background

- Interpretation of key words such as CSR, Sustainable Development.
- Corporation and Corporate power
- Sustainable Development – key to Inter Generational Equity.
- Inter Generational Equity in the use of the natural resources – International Concerns.
- Constitutional Parameters and Contemporary Socio-Economic dynamics.
- Research Problems and questions.
- Research Methodology and its limitations.
- Hypothesis.

Chapter 4 – Constitutional provisions and Environmental Legislations on Corporate liabilities under the concept of Sustainable Development.

- Various Environmental Legislations and Policy.
- Corporate Liabilities under SD.

Chapter 5 –Constitutional Mandate and Judicial Response to Corporate Social Responsibility under the scope of Sustainable Development.

Chapter 6 – Conclusion and suggestions.

Research Methodology:

My method of research will be mainly Doctrinal. The first will be an extensive review of general and India specific literature on Sustainable Development and Corporate Social Responsibility. Study of archival documents will also be of great help to the researcher to understand the historical background of the research topic. These might include press releases, press interviews of key individuals, and minutes of various meetings of the companies.

It is also a matter of equal importance that multiple techniques are adopted in the collection of data to facilitate multiple level analyses. The researcher will mainly depend on primary and secondary sources of data. The researcher will also visit some companies where ever it is relevant with the research question only.

Research Hypothesis:

The Constitution of India which commenced from 26th of January 1950 most of the people thought that it is not well equipped with the concept of Sustainable Development seems to be wrong when we looked to Part III and Part IV of the Constitution. Accordingly the responsibilities to Corporations with regard to environmental accidents also being raised by Courts in India in the light of constitutional mandate, environmental legislations and International environmental law principles. It is evident from the environmental protection cases that courts in India (in particular Supreme Court) raised the issue of Sustainable development while protecting the environment and trade. The researcher would like to ascertain by this research that the role of judiciary is of paramount consideration for protecting the environment while looking at the interest of corporations with the help of the concept of Sustainable Development.

Few Important Supreme Court Judgments as primary sources.

1. *Rural Litigation and Entitled Kendra v. State of U.P. (1985) 2 SCC– 431*
2. *Shiram Food and Fertilizer – M.C. Mehta v. U.O.I, (1986) 2 SCC - 176.*
3. *M.C.Mehta v.U.O.I(1987) 4 SCC– 464 (Tanneries)*
4. *M.C.Mehta v.U.O.I(1988) 1 SCC – 471*
5. *Indian Council for Environmental Action v.U.O.I (1996) 3 SCC 212*
6. *M.C.Mehta v. U.O.I (1996)4SCC 750*
7. *In Vellore Citizen's Welfare Forum v.U.O.I.(1996) 5SCC650*
8. *Mining in Aravalli Hills Range –M.C.Mehta v. U.O.I 2004 SC 4016.*
9. *Sachidananda Pandey and another v. State of West Bengal and Others, AIR-1987, SC1109.*
10. *Deepak Nitrate Limited v.State of Gujarat (2004)6SCC 402.*
11. *Bombay Dyeing & Manufacturing Co. Ltd.(3)v. Bombay Environment Action Group,AIR-2006,SC-1489.*
12. *Karnataka Industrial Area Development Board v. C.Kenchappa- AIR-2006, SC2038.*

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(2) Corporate Power and Social Responsibility-A Blueprint for the future. By Neil H. Jacoby- Macmillan Publishing Co.

(3) Corporate Social Responsibility in Europe-Rhetoric and Realities 2009. Edited By Regine Barth and Franziska Wolff. Published By MPG Books Group, UK.

(4) Corporate Social Responsibility in India- A Study of Management Attitudes By C. Gopala Krishna. Mittal Publications New Delhi, 1992.

(5) Corporate Social Responsibilities Law & Practice by Dr. Saleem Sheikh 1996, Cavendish Publishing Ltd. London.

(6) Corporate Integrity – Rethinking Organizational Ethics and Leadership. By Marvin T. Brown. Cambridge University Press 2005.

(7) Corporate Social Responsibility in the 21st Century- Debates, models, and Practices Across Government, Law and Business. By Prof. Bryan Horrigan.

(8) CSR- The Corporate Governance of the 21st Century. Second Edition, edited by Ramon Mullerat 2011, published by Kluwer Law International.

(9) The New Corporate Accountability, Corporate Social Responsibility and the Law, Edited by Doreen Mc Barnet Aurora and Tom Campbell.

(10) Theory and Practice of CSR by Samuel O. Idowu Celine Louche, Editors – Springer 2011.

(11) Milton Friedman, **"Capitalism and Freedom**" Chicago: University of Chicago Press, 1962, along with his papers on **Social Responsibility of Businesses To Increase Its Profits**- New York Times Magazine (13 Sep 1970).

(12) Corporate Social Responsibility in the 21st Century- Debates, models, and Practices Across Government, Law and Business. By Prof. Bryan Horrigan.

(13) S Shanthakumar's Introduction To Environmental Law 2nd Edition, Reprint 2010 Published by Wadhwa & co.

(14) Environmental Law & Policy in India by Shyam Divan& Armin RosenCranz, Published By Oxford University Press, New Delhi, 2nd Edition.

(15) Environmental Law in India, Third Edition, Reprint 2010 by P.Leelakrishnan, published by Butterworths, Wadhwa, Nagpur.

Websites Referred:

(1) http://www.unglobalcompact.org

(2) http://www.sustainablecities.dk/en/actions/a-paradigm-in-progress/brundland_report-our-commom-future

(3) *CSR in Rural development Sector: Evidences from India, Sanjay Pradhan and Akhilesh Ranjan.* http://www.iiuedu.eu/press/journals/sds/SDS_2010

(4) *CSR Practices in India, Indu Jain, Chairperson, TOI Group.* http://www.crrconference.org

(5) http://www.ndtv.com/article/india/cabinet-totake-up-new-companies-bill-moily133132&ep.

(6) http://www.thehindu.com/business/companies/article2356718.ece

(7) http://www.triplepandit.com/2011/07/making-csr-mandatory-in-india/

(8) http://www.mca.gov.in/ministry/pdf/monthly_summary-May-2011-pdf

(9) http://www.earthtrends.com

(10) http://www.mrfcg.org/aboutclimatejustice

(11) http://www.ilo.org

(12) http://www.unescap.org

(13) http://www.unescap.org/tid/projects/csr_mons1_ilo.pdf

(14) http://www.labour.nic.in/policy/OSH_Policy.pdf